SUPREME COURT OF THE UNITED STATES

CATHY COX, GEORGIA SECRETARY OF STATE *v.* SARA LARIOS ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

No. 03–1413. Decided June 30, 2004

The judgment is affirmed.

JUSTICE STEVENS, with whom JUSTICE BREYER joins, concurring.

Today we affirm the District Court's judgment that Georgia's legislative reapportionment plans for the State House of Representatives and Senate violate the one-person, one-vote principle of the Equal Protection Clause. The District Court's findings disclose two reasons for the unconstitutional population deviations in the state legislative reapportionment plans. The first was "a deliberate and systematic policy of favoring rural and inner-city interests at the expense of suburban areas north, east, and west of Atlanta." 300 F. Supp. 2d 1320, 1327 (ND Ga. 2004). The second was "an intentional effort to allow incumbent Democrats to maintain or increase their delegation, primarily by systematically underpopulating the districts held by incumbent Democrats, by overpopulating those of Republicans, and by deliberately pairing numerous Republican incumbents against one another." *Id.*, at 1329. The court found that Democratic incumbents "attempted to draw districts that would enhance their own prospects at re-election and further their other political ends (such as building up a support base for a future run for Congress)" and also "targeted particular Republicans to prevent their re-election." *Id.*, at 1330. As a result,

> "[w]hile Democratic incumbents who supported the plans were generally protected, Republican incumbents were regularly pitted against one another in an

> obviously purposeful attempt to unseat as many of them as possible. In the House Plan, forty-seven incumbents were paired, including thirty-seven Republicans, which was 50% of the Republican caucus, but only nine Democrats, comprising less than 9% of that caucus (as well as one Independent). Because six of the twenty-one districts involved were multi-member districts, the end result was that a maximum of twenty-eight of the paired incumbents could be reelected, and the remaining nineteen would be unseated. Similarly, the 2002 Senate Plan included six incumbent pairings: four Republican-Republican pairings and two Republican-Democrat pairings. In the 2002 general election, eighteen Republican incumbents in the House and four Republican incumbents in the Senate lost their seats due to the pairings, while only three Democratic incumbents in the House and no Democratic incumbents in the Senate lost seats this way." *Id.*, at 1329–1330 (citations and footnotes omitted).

Although "[t]he numbers largely speak for themselves," the District Court found that the shapes of many of the newly created districts supplied further evidence that the plans' drafters "inten[ded] not only to aid Democratic incumbents in getting re-elected but also to oust many of their Republican incumbent counterparts." *Id.*, at 1330. The court noted, for example, that a Republican senator had been "drawn into a district with a Democratic incumbent who ultimately won the 2002 general election, while an open district was drawn within two blocks of her residence," that two of the most senior Republican senators had been drawn into the same district, and that a Republican House member "who was generally disliked by several of the Democratic incumbent[s] was paired with another representative in an attempt to unseat him."

Ibid. Moreover, many of the districts that paired Republicans were both oddly shaped and overpopulated, "suggesting that the districts were drawn to force Republican incumbents to run against each other and to draw in as many Republican voters as possible in the process." *Ibid.*

The drafters' efforts at selective incumbent protection "led to a significant overall partisan advantage for Democrats in the electoral maps," with "Republican-leaning districts vastly more overpopulated as a whole than Democratic-leaning districts," and with many of the large positive population deviations in districts that paired Republic incumbents against each other. *Id.*, at 1331. The District Court found that the population deviations did not result from any attempt to create districts that were compact or contiguous, or to keep counties whole, or to preserve the cores of prior districts. *Id.*, at 1331–1334. Rather, the court concluded, "the population deviations were designed to allow Democrats to maintain or increase their representation in the House and Senate through the underpopulation of districts in Democratic-leaning rural and inner-city areas of the state and through the protection of Democratic incumbents and the impairment of the Republican incumbents' reelection prospects." *Id.*, at 1334. The District Court correctly held that the drafters' desire to give an electoral advantage to certain regions of the State and to certain incumbents (but not incumbents as such) did not justify the conceded deviations from the principle of one person, one vote. See *Reynolds* v. *Sims,* 377 U. S. 533, 565–566 (1964) (regionalism is an impermissible basis for population deviations); *Gaffney* v. *Cummings,* 412 U. S. 735, 754 (1973) ("multimember districts may be vulnerabl[e] if racial or political groups have been fenced out of the political process and their voting strength invidiously minimized"). See also *Reynolds*, 377 U. S., at 579 (explaining that the "overriding objective" of districting "must be substantial equality of population among the various dis-

tricts" and that deviations from the equal-population principle are permissible only if "incident to the effectuation of a rational state policy").

In challenging the District Court's judgment, appellant invites us to weaken the one-person, one-vote standard by creating a safe harbor for population deviations of less than ten percent, within which districting decisions could be made for any reason whatsoever. The Court properly rejects that invitation. After our recent decision in *Vieth* v. *Jubelirer,* 541 U. S. ___ (2004), the equal-population principle remains the only clear limitation on improper districting practices, and we must be careful not to dilute its strength. It bears emphasis, however, that had the Court in *Vieth* adopted a standard for adjudicating partisan gerrymandering claims, the standard likely would have been satisfied in this case. Appellees alleged that the House and Senate plans were the result of an unconstitutional partisan gerrymander. The District Court rejected that claim because it considered itself bound by the plurality opinion in *Davis* v. *Bandemer,* 478 U. S. 109 (1986), and appellees could not show that they had been "'essentially shut out of the political process.'" App. to Juris. Statement 86a (quoting *Bandemer*, 478 U. S., at 139). Appellees do not challenge that ruling, and it is not before us. But the District Court's detailed factual findings regarding appellees' equal protection claim confirm that an impermissible partisan gerrymander is visible to the judicial eye and subject to judicially manageable standards. Indeed, the District Court's findings make clear that appellees could satisfy either the standard endorsed by the Court in its racial gerrymandering cases or that advocated in Justice Powell's dissent in *Bandemer*, 478 U. S., at 173–185.*

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*A tally of the votes in the state senate elections shows that, although Republicans won a majority of votes statewide (991,108 Repub-

Drawing district lines that have no neutral justification in order to place two incumbents of the opposite party in the same district is probative of the same impermissible intent as the "uncouth twenty-eight-sided figure" that defined the boundary of Tuskegee, Alabama, in *Gomillion* v. *Lightfoot,* 364 U. S. 339, 340 (1960), or the "dragon descending on Philadelphia from the west" that defined Pennsylvania's District 6 in *Vieth,* 541 U. S., at ___ (slip op., at 25) (STEVENS, J., dissenting). The record in this case, like the allegations in *Gomillion* and in *Vieth*, reinforce my conclusion that "the unavailability of judicially manageable standards" cannot justify a refusal "to condemn even the most blatant violation of a state legislature's fundamental duty to govern impartially." *Vieth*, 541 U. S., at ___ (slip op., at 26). I remain convinced that in time the present "failure of judicial will," *id.*, at ___ (slip op., at 26), will be replaced by stern condemnation of partisan gerrymandering that does not even pretend to be justified by neutral principles.

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lican votes to 814,641 Democrat votes), Democrats won a majority of the state senate seats (30 to 26). See 2002 Georgia Election Results, www.sos.state.ga.us/elections/election_results/2002_1105/senate.htm (as visited June 23, 2004, and available in Clerk of Court's case file). Thus, it appears that appellees also could state a partisan gerrymandering claim under JUSTICE BREYER's indicia of unjustified entrenchment. See *Vieth* v. *Jubelirer,* 541 U. S. ___, ___ (2004) (slip op., at 12) (dissenting opinion) ("[a] the boundary-drawing criteria depart radically from previous or traditional criteria; [b] the departure cannot be justified or explained other than by reference to an effort to obtain partisan political advantage; and [c] a majority party [*i.e.*, party receiving majority of total votes in relevant election] . . . has once failed to obtain a majority of the relevant seats in election using the challenged map").